



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Funding Request from North San Joaquin Water Conservation District (NSJWCD)

MEETING DATE: December 15, 1999

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council consider the request from the NSJWCD for financial support for water rights activities.

BACKGROUND INFORMATION: Just prior to completion of the agenda for this meeting, the City received the attached letter from the NSJWCD requesting financial support for water rights activities. Due to time constraints, City staff will present additional information and a recommendation to Council at the December 15, 1999 meeting.

FUNDING: Water Fund

Richard C. Prima, Jr.
Public Works Director

RCP/lm

Attachment

cc: Water/Wastewater Superintendent
NSJWCD, Fred Weybret
NSJWCD, Ed Steffani

APPROVED: _____

H. Dixon Flynn -- City Manager

DIRECTORS
George A. Gillespie
Thomas Hoffman
Jerry D. Mettler
Matthys Van Gaalen
Fred Weybret

NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT

221 W. Pine St., Lodi, CA 95240

GENERAL MANAGER
Edward M. Steffani

LEGAL COUNSEL
Stewart C. Adams, Jr.

December 8, 1999

City Council
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

SUBJECT: North San Joaquin Water Conservation District Finances

I am writing as directed by North San Joaquin Water Conservation District (NSJWCD) Board action of December 7, 1999.

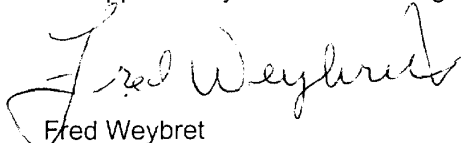
As you know, NSJWCD includes most of the City of Lodi and approximately 50,000 acres of agricultural land to the east of the City. The primary function of the District is to provide surface water from the Mokelumne River to correct the critical groundwater overdraft. As you also know, the District's efforts have been limited by a budget curtailed by Proposition 13. The current annual revenue of approximately \$175,000 is woefully inadequate, and the possibility for increasing revenue since the recent Proposition 218 is slim.

An urgent matter is now before the District. The State Water Resources Control Board (SWRCB) is scheduled to make the first so-called Bay/Delta decision on December 28th. Part of the decision (see enclosed copies of pages 66 through 68 of proposed decision) could severely restrict or eliminate the District's and the City's right to water from the Mokelumne River. Special legal counsel and other expert help will be needed immediately and during the next few months to fight this proposal. The District is without funds to pay these costs.

It goes without saying that the City of Lodi benefits from the activities of the District. Correction of the groundwater overdraft must be accomplished.

NSJWCD asks that the City help fund the District up to \$100,000 annually, as special needs may require. The District does not ask that this assistance be permanent, but only until the District voters approve an increase in District revenue. We intend to present such a request to the voters within the next four years.

We appreciate your understanding of our problem and hope that you will be able to help.



Fred Weybret
President
North San Joaquin Water Conservation District

FW/ES/pmf

Enclosure

LCITYCOUNCIL

Alternative 5 would be significantly greater than under the JSA, especially in the spring of critically dry years. The USFWS did not, however, analyze the effects of these greater flow releases on delta smelt. (R.T. pp. 3179-3180.)

It was argued that the JSA should not be approved until the flow requirements for achieving the salmon doubling narrative objective are determined. Implementing the narrative objective for salmon protection requires a long-term process. A period of actual operation meeting the numerical objectives in the 1995 Bay-Delta Plan or the measures under the SJRA/VAMP, coupled with adequate monitoring, is required before the SWRCB can determine whether additional implementation measures are needed to meet this objective.

It was argued that the agreement should not be adopted until the flow requirements for meeting water quality objectives in the interior of the southern Delta are determined. Additional Mokelumne River flows, however, are unlikely to affect the salinity at these southern Delta stations.

The North San Joaquin Water Conservation District (NSJWCD) argued that its water supply should be protected from the effects of the MOU. (R.T. pp. 2988-2994.) When the SWRCB approved EBMUD's water right application (for export of water) in SWRCB Decision 858, it granted a junior permit to NSJWCD (an inbasin user) under a competing application. (NSJWCD 2, pp. 3.) NSJWCD contends that the area-of-origin statutes were violated when EBMUD was issued a permit. None of the area-of-origin statutes apply to EBMUD's water rights, however, because EBMUD's water right is not based on a state-filed application under Water Code section 10500 et seq., and EBMUD also is not subject to Water Code section 11460 et seq. The SWRCB granted a permit to EBMUD based on its municipal use being a higher beneficial use of water than NSJWCD's agricultural use, and found that there would be no unappropriated water available to NSJWCD after EBMUD had completed putting its water to beneficial use. The SWRCB issued a temporary permit to NSJWCD for water surplus to EBMUD's needs.

The NSJWCD also makes the area-of-origin argument regarding the SWRCB's grant of permits to the USBR for American River water, while denying a competing application of the NSJWCD.

(NSJWCD 2, p. 15.) In this case, both parties were exporters, so the area-of-origin statutes again did not apply.

A portion of the overdrafted groundwater basin in NSJWCD's service area is within the legal Delta. Thus, NSJWCD contends that this area is entitled to water, and should receive priority over the SWP and the CVP for Delta water under the Delta Protection Statutes. The Delta Protection Statutes, however, protect existing water rights in the Delta. The NSJWCD currently does not have water rights in the Delta. If the NSJWCD wishes to appropriate water from the Delta, it will have to first file an application.

NSJWCD has water right permits to divert up to 80 cfs by direct diversion and 20 taf by storage from the Mokelumne River between December 1 and July 1. The NSJWCD also contracts for 20 taf of surplus water from EBMUD to provide deliveries outside its diversion season.

The NSJWCD contends that it will bear the burden of EBMUD's increased fish flow releases under the 1996 MOU because it will receive less surplus water from EBMUD. NSJWCD further contends that EBMUD will suffer no water supply impacts as a result of the JSA. (NSJWCD 2, pp. 12-13.)

One party argued that DWR cannot backstop the agreement without violating the Monterey Agreement and the existing contracts. The Monterey Agreement is between the DWR and its water supply contractors. The Monterey Agreement is not binding on the SWRCB and does not limit the contents of a water right decision. Water supply contracts typically include provisions recognizing that delivery is not required when water is not available due to applicable regulatory requirements. (*O'Neil v. United States* (1995) 50 F. 3d 677.) Even assuming the Monterey Agreement could read as a guarantee by DWR to provide water notwithstanding limitations on its water rights, any remedy for violation of the agreement would be between DWR and the contractors.

WID has post-1914 water rights that are included in the Notice of Hearing for the Bay-Delta Water Rights Hearing. These are Licenses 5945, 8214, and 8215 (Applications 5807, 10240, and 12648, respectively). WID also claims pre-1914 water rights. WID has an agreement with

EBMUD under which WID diverts 60 taf under its water right licenses and additional water when available under its pre-1914 water rights. When inflow to Pardee Reservoir is less than 375 taf, WID's diversion is reduced to 39 taf. WID has passed a resolution stating that it will not divert the expected flows below Woodbridge, which are identified in the JSA, if the SWRCB finds that the JSA flows are an adequate contribution to the Delta for the Mokelumne basin as a whole. (WID 9; R.T. p. 2951.)

8.1.3 SWRCB Findings Regarding the Mokelumne Agreement

The flows under the JSA differ from the flows under Flow Alternatives 3 and 5. As USFWS argued, Alternative 5 might provide more benefit for Delta fish than the other alternatives, but it could result in more frequent consumptive use water shortages and more instances of elevated water temperatures affecting fish. The SWRCB finds that the fish should be protected, but consumptive uses nevertheless should be allowed to continue at a reasonable level. Excessive releases for fish at some times could result in releases of water that is too warm for fish at other times. The SWRCB finds that it would not be in the public interest to require more water from the Mokelumne River system than will be provided under the JSA. Additional releases could exacerbate the shortages experienced by NSJWCD. Further, any requirements imposed by the SWRCB could be added to the JSA flows when the JSA flows are lower, but flows may not be subtracted from the JSA when such flows are higher than the SWRCB alternatives. This could result in greater releases than either the JSA or the SWRCB alternatives would require alone. Accordingly, this decision establishes EBMUD's responsibility to help meet the Bay-Delta flow dependent objectives consistently with the JSA provisions. Additionally, consistent with WID's resolution, this decision establishes WID's responsibility by amending WID's water right licenses to require that WID bypass the expected flows below Woodbridge, as defined in the JSA. Unless it gives further notice, the SWRCB will not revisit the water rights on the Mokelumne River in future phases of the Bay-Delta Water Rights Hearing.

The DWR has agreed to backstop a part of any incremental responsibility to provide water from the Mokelumne River in excess of the JSA flows. Accordingly, this decision establishes a responsibility for the DWR to backstop a share of any additional Mokelumne River responsibility that the SWRCB determines after conducting further proceedings. The USBR declined during the hearing to provide a backstop for Mokelumne River flows. The USBR,

CITY COUNCIL

STEPHEN J. MANN, Mayor
ALAN S. NAKANISHI
Mayor Pro Tempore
SUSAN HITCHCOCK
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December 9, 1999

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RANDALL A. HAYS
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Conservation District
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SUBJECT: Funding Request from North San Joaquin Water Conservation District (NSJWCD)

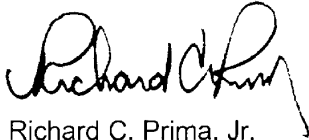
Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, December 15, 1999. The meeting will be held at 7 p.m. in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the regular calendar for Council discussion. You are welcome to attend.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Alice Reimche, City Clerk, at 333-6702.

If you have any questions about the item itself, please call me at 333-6759.



Richard C. Prima, Jr.
Public Works Director

RCP/lm

Enclosure

cc: City Clerk ✓